

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FREDERICK R. RITCHIE, an individual,

Plaintiff,

vs.

FEDERAL EXPRESS CORPORATION, a
Delaware corporation,

Defendant.

Case No. C04-1753RSL

ORDER GRANTING MOTION TO
COMPEL AND FOR SANCTIONS IN
PART

This matters comes before the Court on plaintiffs's "Motion for Order to Compel Compliance With Court's Orders and for Sanctions." (Dkt. # 92). Plaintiff maintains that the defendant has failed to comply with the Court's November 10, 2005 "Order on CR 37 Joint Submission" (Dkt. #93) and asks the Court to compel defendants to comply with the Order and to impose sanctions.

On November 10, 2005 the Court ordered defendant to:

Review the files of the seven managers in FedEx's Technology Services Department in the Western Region and the files of the 103 DGO (Domestic Ground Operations) managers in Washington between January 1, 2000 and January 1, 2003, and identify applications of the Defendant's Acceptable Conduct and/or Guaranteed Fair Treatment policies stemming from complaints/claims/allegations of sexual harassment by non-management personnel against manager/supervisor.

Review the files of the seven managers in FedEx's Technology Services Department in the Western Region and the files of the 103 DGO (Domestic Ground Operations) managers in Washington between January 1, 2000 and January 1, 2003, and identify members of management who were

1 terminated based on complaints/claims/allegations of sexual harassment by
2 non-management employees.

3 Order on CR 37 Joint Submission at 5. After a number of requests by plaintiff to have defendant
4 turn over this information, defendant provided plaintiff with a declaration from Dawn Melillo
5 Maszk, a Senior Human Resources Representative at FedEx Express, on March 28, 2006. The
6 declaration stated that she had “reviewed a list of approximately 104 managers for Washington
7 State and determined none of the managers listed had any allegations of sexual harassment
8 between January 1, 2000 and January 2, 2003.” Declaration of Patrick L. McGuigan (Dkt. #93)
9 (“McGuigan Decl.”), Ex. 5. The declaration also noted that she had contacted other human
10 resources officials from the State of Washington and that none of those people “were aware of
11 any complaints.” From the record, it does not appear that relevant human resources files were
12 reviewed in any meaningful way. Instead, defendants relied on the personal recollections of its
13 human resources personnel.

14 Plaintiff sent defendant a letter on May 26, 2006 expressing concern over defendant’s
15 failure to actually “review the files” of managers as required under the Court’s November 10,
16 2005 Order. McGuigan Decl., Ex. 6. Defendant replied on June 9, 2006 stating that it was
17 confident “that the Court’s directive has been met” because the human resources officials and
18 the people to whom they spoke “are readily familiar with the managers at issue as part of their
19 day today [sic] job functions and would have been aware of any claims of sexual harassment
20 made by hourly employees against them as the complaints and investigations thereon would
21 have been their responsibility. As well, logs of such complaints were examined.” McGuigan
22 Decl., Ex. 7. It was only after Ms. Maszk’s July 19, 2006 deposition and the filing of plaintiff’s
23 current motion that defendant actually reviewed all of the individual investigative files relating
24 to internal EEO investigations. This renewed investigation confirmed defendant’s earlier
25 contention that no internal sexual harassment complaints were filed against Washington DGO
26 managers by hourly employees between 2000 and 2002.

1 The Court concludes that defendant's recent review of its internal EEO investigative files
2 complies with its duties under the Court's November 10, 2005 Order. It is in these files that
3 sexual harassment allegations, investigative notes surrounding such allegations, and any
4 resulting disciplinary actions are recorded, and it appears that defendant has now reviewed these
5 files in a good faith effort to comply with the Court's Order. As such, plaintiff's request to have
6 the Court compel the production of the 103 managers' files is denied.

7 That being said, it is clear that an actual review of such files should have been completed
8 prior to plaintiff being forced to file the motion currently before the Court. On multiple
9 occasions defendant either ignored or brushed aside plaintiff's concerns with its compliance
10 with the Court's directive "to review the files" of managers to identify instances of allegations of
11 sexual harassment by non-management personnel against management. It was only after
12 plaintiff filed the current motion that defendant chose to do a thorough review of the relevant
13 files. Though defendant may have believed that the "first-hand knowledge" of human resources
14 personnel was sufficient at the time, memories are not always accurate and plaintiff had a right
15 to have the actual files reviewed.

16 Under Federal Rule of Civil Procedure 37(a)(4), the Court may require the party "whose
17 conduct necessitated" a motion to compel to "pay to the moving party the reasonable expenses
18 incurred in making the motion, including attorney's fees, unless the court finds that the motion
19 was filed without the movant's first making a good faith effort to obtain the disclosure or
20 discovery without court action, or that the opposing party's nondisclosure, response or objection
21 was substantially justified, or that other circumstances make an award of expenses unjust." This
22 sanction may be imposed both when the motion to compel is granted and when the requested
23 discovery is provided after the motion was filed. Fed. R. Civ. P. 37(a)(4). Similar powers are
24 granted to the Court under Federal Rule of Civil Procedure 37(b). Here, plaintiff made a good
25 faith effort to obtain the discovery in question without court action and defendant's failure to
26 search the files in question was not "substantially justified." Plaintiff's request for
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1 reimbursement of the reasonable expenses incurred in making the motion is therefore granted.

2 The Court concludes that more severe sanctions are not necessary at this point.

3 For all the foregoing reasons, plaintiff's motion to compel and for sanctions is
4 GRANTED in part. Plaintiff shall submit, within ten days of the date of this Order, a statement
5 of their reasonable costs associated with bringing this motion.

6 DATED this 17th day of October, 2006

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9 Robert S. Lasnik
10 United States District Judge
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